

1885-027 Chancery Causes: J. C. Scott to vs. Gregg & Co
Lee Co.

Gregg, Condie, Oakley, Johnson

CA-Contract Dispute
T-Property

To Hon. Jno. A. Kelly, Judge of the
Circuit Court of the County of Lee
and State of Va:

Your orators J. C. & J. W. Scott of
the County and State afore-said,
humbly complaining, sheweth unto
Your Honor: That in the year
1881 they bought a mowing
machine and sulky rake from
an agent of Gregg & Co. of Morris-
town Tenn. for which your
orators gave their joint note of
one hundred dollars. The

if the afore-said
said machine
complete and it
understood by your orators when
they made the purchase.
Your orators further shew That
they sold said machine & rake
to one E. Wynn of Horlan Co. Ky
for which said Wynn paid your
orators \$110.00. Your orators further
state that when they received
the machine & rake from Gregg
& Co. they were boxed and that
your orators knew nothing of
the condition of said machine.

but thinking that said machines
were complete and ready for
use your orators sold them
to the afore-said E. Wynn as such.
Your orators relying upon
the truth of the statements made
by the agt. of Legg & Co did not
unbox the machines and your
orators confiding in their integrity
represented the machines to the
said E. Wynn to be complete in
all their parts. But when the
said E. Wynn unboxed
the same he ^{found} that
the frame and screws of
the same were missing, by which
the same was rendered entirely useless and
instead of being worth \$50.00, the
price which said E. Wynn paid
your orators for said rake, it
was worth practically nothing.
When said E. Wynn made this dis-
covery he brought suit against
your orators for \$50.00 the price
at which your orators sold him, the
said E. Wynn, the rake,
Your orators further state that
Legg & Co. have also instituted suit

against them (your orators) for the
amt. of the note executed by
your orators to said Gregg & Co.,
mentioned above, but since
suit brought by said Gregg & Co.
your orators have paid fifty dollars
of the amt. of said note.

Now, therefore as said Gregg & Co.
failed to comply with ^{the} contract by
~~and~~ furnishing your orators with ~~perfor-~~
machines ready for use as they prom-
ised to do, but on the other hand
furnished a machine ~~wholly~~ ^{unfit} for use.

They sold said note.

Your orators therefore allege that
Gregg & Co. defrauded them in the
sale of said note.

The object of this bill is to enjoin
further proceedings by Gregg & Co.
against your orators until the
suit brought by E. Wynn against
your orators ^{shall have been} decided.

Your orators, being remediless save
in a court of Chancery, pray that
your ^{Honor} may grant an injunction
restraining the proceedings ~~of said~~

J.B.S.

J.C. & J.W. Scott
 " 3 Jnj. Bell
 Gregg & Co.

Plffs. C. \$8.00
 D.F. .50
 8.50

Defts Cost Re
 C 2.80
 D.F. 75
 A 15.00
 \$18.60

Injunction granted
 according to prayer
 of Bell, to take effect
 when plaintiffs execute
 a bond in the penalty
 of \$150, conditioned
 to pay the debt, the collection
 of which is enjoined, and
 all damages & costs awarded
 against them, should
 the injunction be
 hereafter dissolved

J. A. Kelly

To the Clerk of
 Circuit Court
 for Lee County

Nov. 12 1884

1884. Decr. Bond given
 1885 July, parties agree
 to amendment Contd
 " Feb. Contd.
 " Mr. and filed and
 Cause set for hearing
 " Aug. Decr. Bond

by Gregg & Co. against J.W. Scott.
 Actual years orators pray for such
 then & further relief as their
 case requires and to signify my
 assent
 J.W. Scott
 J.B. Sullivan
 J.C. & J.W. Scott
 J.B. Sullivan

To the Honorable John A. Kelly Judge of
the Circuit Court of Lee County 8th

The Summons and answer of ~~EL~~
^{8C Condie}
Gregg & C. P. Gregg, partners trading under the
firm name and style of Gregg & Co to a bill of
supplication exhibited against them under their
firm name of Gregg & Co by J. C. & J. W. Scott.

These respondents say that the Plaintiffs
bill is not sufficient in law to call upon
them to answer in this Honorable Court, but
that there is good cause of demand, thereto
and they do accordingly demand and they
pray judgement of their said Summons &c.

And not waiving said demand, but
relying and insisting thereon should & there
and further answer be required, answer-
ing these respondents say, that it is true
that they sold, through their Agent one Charles
B. Johnson, on or about the 21st day of June
1881, to the complainants J. C. Scott & J. W. Scott
a mowing machine and sulky rake, at the
price of One hundred dollars, for which the
said complainants executed their note in
writing signed by their firm name of J. C. &
J. W. Scott, payable on the 21st day of June
1882. Your respondents suppose that it is
true that their said Agent represented said
machines, (Mower & Rake) to be complete
and that it was so understood at the time

at the time of the sale, that said Machine & rake were to be complete, and the respondents own that said Machine and rake were at the time of said sale complete in all particulars, that they delivered them complete in all particulars to the railroad Agent at Morris Town Tenn for shipment to the Plaintiffs at Bristol Tenn. Your respondents suppose that it is true that the said J. C. & W. Scott sold said Machine and rake to said E. Hyman, but of this they know nothing within themselves, but at any rate according to their own statement in their bill Mr Hyman paid them for said Machine & rake.

Respondents suppose that it is true that some parts of the mowm was boxed but according to their recollection no part of the rake was boxed, but was shipped in the usual way of shipping rakes and in such condition that any bolts or other pieces had been lost or missing that it could have been readily seen by inspection even before said rake was set up for use. Respondents know nothing of the representations made by the Plaintiffs to the said Hyman. But respondents suppose that said Plaintiffs represented said Machines as they state and respondents believe and here assert that said machine mowm and rake were both delivered to

the said Scotts by The Depot Agent at Bristol
in a complete condition in all particulars
and they further believe that it delivered
in like condition to the said Scotts at their
home, in Lee County. But if any bolts or screws
were lost or missing from said rake the said
Scotts made no complaint thereof until long
after their said note was due, not until after
three respondents had placed the note in
the hands of attorneys for collection, and
perhaps not until after the original judg-
ment was rendered against them on said
note. Then Mr J. C. Scott stated or complain-
ed to respondents Agent C. B. Johnson that
some of said bolts or screws were lost out
of said rake and that he Scott had, had
to buy others for said Wynn at a cost of one
dollar and fifty cents, and respondent
directed their agent or their agent for them
agreed to pay said sum of \$1.50 to the said
Scott and he the said Agent endorsed the
same on said note, that is that \$1.50 of said
debt be paid or allowed to said Scott
This was all the complaint that respondents
ever heard of until the filing of this bill
of injunction. It is strange that if said
Rake was worth practically nothing, that
said Wynn would have received it paid
for it, and used it three summers or

paying times without any complaint whatever.
Respondents brought suit against the said
Scotts on the 20th day of June 1883. Two years
after said Sale was made, and almost a year
after said note became due, and at the August
term 1883. of your Honorable Court judgment
was rendered on said debt, and it so lay
until the 15th day of November 1883 when an
execution issued and was placed in the hands
of R D Flanory Sheriff of Lee County, which
execution was then returned by said Sheriff
at the fall rules 1884, of the Circuit Court of
Lee County "Not executed for want of time".
Then on the 12th day of January 1884 another
execution issued and was placed in said Sher-
iff's hands for collection, which last named
execution was levied by said Sheriff on the 7th
day of February 1884, and a forthcoming bond
executed by said Scotts with S. P. Payne and
J. K. P. Barron securities. This bond was forfeited
and at the March term 1884 of your Honorable
Court judgment was rendered on said bond
for the sum of \$257.24, but to be discharged
by the payment of \$128.62. with interest from
the 7th day of February 1884. and costs \$5.00
all of which fully appears by the records of your Honorable Court.
Copies of which are so true as is necessary will be filed with
during all this time no complaint whatever
was made except for the lost bolts before
mentioned which was settled between

if required

the said Scotts and The Agent of respondents
by giving Credit for the sum of \$1.50 all that
was claimed by said Scott, and this sum
is endorsed as a credit on all of the execution
issued on the judgment on said forthcoming
bond. Your respondents deny that said Myer
brought suit against said Scotts for damages
on account of said rack when he discovered
if ever did discover the loss of said screws & bolts
on the contrary they are informed and they
here assert that he did not bring said suit
until sometime in the fall or latter part of
the summer of 1884 after said rack had
been used, during three summers or haying
seasons, and not until after he the said
Myer and the said Scotts had gotten into
law over other matters. It is true that your
respondents have brought suit on said note
as stated above. It is also true that said
Scotts have paid \$60.00 on said judgment
\$24.71 of which was paid to respondents
and the balance was applied by respondents
attorneys upon the costs incurred in said
suits. Respondents positively deny any
failure upon their part or that of their agent
to comply with their contract, they positively
deny any fraud upon their part or any
damages to the said Scotts by their failure
But upon the contrary they kept their

with the said costs, in all particulars
And now having answered the Plain-
tiffs bill as fully as They are advised
That it is natural or necessary for
them to answer it They pray That said
injunction be dismissed and That
They be adjudged Their damages &
costs in this suit expended &c.

Richardson Duncan & Orr,

Attys for Respondents

State of Tennessee
County of Hamblen } To wit

~~General Agent & manager~~ This day, Alexander H. Gregg
~~one~~ of the firm of Gregg & Co personally
appeared before the undersigned
a ~~Notary Public~~ ^{Notary Public} in and for the
County and State aforesaid and
made oath that the statements made
in the foregoing answer so far as made
upon their own information are
true and so far as made upon infor-
mation derived from others they
believe them to be true Given under
my hand This the day of
February 1885.

John Murphy Notary Public
for Hamblen County

Grigg vs
advs by answer
J. C. & J. M. Scott.

Filed in open court
by leave thereof
March 25th 1885.
J. H. Hyatt C. C.

J. C. & J. W. Scott.

vs-

Gregg. & Co.

Pliffs

by J. W. Scott

Defls

This cause came on this day to be heard upon the bill of the plaintiffs the answer of the defendants and replication thereto the deposition of witnesses, and was argued by counsel on consideration whereof and for reasons appearing to the Court the injunction heretofore granted in this cause is dissolved, and it is further adjudged ordered and decreed That the defendants recover of the plaintiffs their costs in this behalf expended to be taxed by the Clerk for which execution may issue and this cause is stricken from the docket.

J. C. + J. W. Scott
vs $\frac{3}{4}$ Deane

Gregg + Co

Entered Pay 470

J. R. Gibson D. L.

Enter this clear

In. A. K.

Aug 29th 1884

The deposition of Jacob Oakley taken by Consent in the Chancery cause of J. C. & J. W. Scott plaintiffs against Gregg & Co defendants, on the 26th day of March 1885; to be read on behalf of plaintiffs.

Jacob Oakley a witness of lawful age being duly Sworn deposes as follows,

Question by Plaintiff.

Did you haul the rake about which the Controversy is being had between Gregg & Company and J. C. & J. W. Scott, from Bristol Term to E. Wynn in Harlan Co Kentucky

Answer Yes I did haul the rake from Bristol to E. Wynn in Harlan Co,

Question by Same. Was the rake in the same condition when you delivered it to Mr. E. Wynn, that it was when received by you at Bristol and what was that condition?

Answer. It was as far as I know, It lacked the bolts, Hinges, Seat and lever,

Question by ^{Same} ~~Do~~ What was the value of the rake in such a condition?

Answer. I would consider it worthless in that condition

Ques. by same. Was the rake unloaded between Bristol & E. Wynn's, or was did the complainants interfere with or have anything to do with said rake in transit?

Answer. It was not unloaded on the road. The Plaintiffs had nothing to do with it, while on the road that I know of.

X Examined by Dfts Counsel
Question by Defendants What year was it you hauled said rake.

Answered. I think in year 1881.

Question by same. At the time you received said rake from the Agent at Bristol did you make any examination to see whether or not it was complete in all its parts?

Answer I did not,
Question. Was said rake boxed if so how. was it boxed or how fixed up for hauling?

Answer. I do not recollect. That it was boxed. If any of it was boxed it was only small parts, and they were in the box with parts of the mowing machine. as I do not recollect of getting but one box out of the depot, it was

Tied in bundles except the wheels,
Question by same. Can you state positively
that no parts of said rake were lost out of
your wagon on the way from Bristol to
Horton County Ky where you delivered it to
E Wynn?

Answer. I Cannot. I had a good wagon
bed, and if anything was
lost it must have been taken
by some person.

Question Did you stay at Mr Wynn's
until he had put up or tried to put up
said rake.

Answer. I did; myself and Mr Wynn
tried to set it up.

Question by same. What bolts were missing?

Answer. They were all missing.

Question by same. What bolts and how
many belong to such a rake, if it is in
complet condition.

Answer. I Cannot say. Though some are necessary.
Question by same Did you haul to Mr
Wynn at the same time a mowing machine

Answer. I did.

Question by same Was it put up for work
before you left.

Answer. It was. I put it up and mowed
one half a day with it before
I left.

Question by same Did Mr Wynne receive said rake from you, or did he send it back to the Messrs Scotts,

Answer. I left it there. but Mr Wynne said he would not receive it unless he got the attachments, and he still has it,

Question by same, Has he used said rake? since it has been in his possession

Answer. I dont know. I afterwards got some balts. from B. F. Thompson by order of J. C. Scott, which I delivered to Mr Wynne

Question by same. You say you regard the rake as worthless in the condition it was then in. Were the wheels not in good order and of some value?

Answer. I meant when I said it was worthless that it was useless for the purposes for which it was intended, that of raking hay.

Question Can you state whether ~~the~~ that rake the Teeth hooked in or were bolted in

Ans I can not.

Question What would now be the reasonable cost or value of the missing parts of the rake?

Answer. I dont know,

And further this depo-

must south not.

Jacob Oakley
Virginia Lee County To wit.

The foregoing deposition of
Jacob Oakley, was taken
Subscribed and sworn to before
me, on the day, and for the
purposes mentioned in the
Caption.

Given under my hand this 26th
day of March 1886.

H. C. Foslyn J. P.

J. C. & J. W. Scott

vs. Deho.

Gregg & Co.

Filed Aug. 3 / 1885

J. A. G. Dyatt
cc.

Justices fee 50cts

J. C. Scott

Pliff

vs

In Chancery.

Gregg & Co

Defts.

The deposition of C. B. Johnson taken by consent of parties on the 22nd day of July 1888. The said witness being of lawful age and first duly sworn deposes & says.

I as agent for the firm of Gregg & Co sold to J. C. Scott in the year 1881, a meadow King Mower & Suckey rake at the price of \$1.00 ⁰⁰ to be delivered in the town of Bristol, Tenn. Mr J. C. Scott afterwards informed me he had received the Mower & rake and he executed to said Gregg & Co the ^{firm} note of J. C. & J. H. Scott for the price of said rake and mower.

Question by depts. Were there any complaints at anytime made to you by the Mess Scotts in regard to any defects or missing parts of said rake, if so when made and what were they?

Sometime after this I met with Mr J. C. Scott and he complained that when Mr Hym to whom he had sold the rake went to put up the rake some parts were missing and he said he brought some parts & furnished Mr Hym and that he thought Gregg & Co ought to pay for the parts. I informed him they ought not, but agreed to give him credit for the amount he had paid for the parts, \$1.50 on their note, which I did & the credit is on

Question
by same.

the note.

Did Mass Scott at any other time before suit was brought on said note claim any other defects or missing parts and if so, when & what did they claim?

Answer

I saw Mr. J. C. Scott frequently and he made no other claims but promised to pay and only asked time which was granted from time to time and finally I had to bring suit on the note. There was no defense made to the action at law and before execution was issued was the judgment. Mr. J. C. Scott asked that no execution issue and promised to pay by a certain time one half the judgment and the remaining one half by another certain time which I agreed to and did hold up the execution. The note shows the date of its execution and the proceedings at law shows when suit was brought, to which reference is here made.

Question by
Repps,

How long after the note was executed till I complained to you about the deficiency of the rake?

Answer,

I don't recollect. I don't know whether it was the first time, or the second that I saw Mr. Scott.

Question
time

Was the mower & rake in question

shipped directly from Mowatton
Penn, the place of business of
Gregg & Co, or from some other point?

Answer

I ordered Gregg & Co. to ship the
mower & rake to Bristol Tenn. to
Mr. Scott. I don't know from
what point they were shipped.

Question

By plfys.

Do you know what brand of rake
or whose make Gregg & Co. shipped
to Mr. Scott?

Answer

^{the company} one of
I do not. I directed to send their
rakes & mower, which is the Meadow
King mower, & the Meadow King
rake, & the Gregg & Co. rake.

Question

By Plfys.

Has one of these rakes, above mentioned
more bolts than the other?

Answer

I think so. The Meadow King probably
has more. From the description Mr.
Scott gave me, I think it was the Gregg
& Co. rake. Maybe Mr. Scott said he
did not mean to examine the rake,
and further the defendant said so.

C. B. Johnson

State of Virginia, County of Lee, to wit:—

I, John B. West, Notary Public for said county, in the state aforesaid, do hereby certify, that C. B. Johnston, whose name is signed to the foregoing deposition, personally appeared before me in my said county & made oath, that the facts set forth in said deposition are true to the best of knowledge & belief.

Given under my hand this, 2nd day of July, 1885

John B. West, N.P.

N. P.'s fee: 75 cts.

chgd to Deft.

Gregg & Co

advs Decho

J. C. & J. W. Scott.

Filed Aug. 3rd 1885

John B. West
cc

C. B. Johnston

N. P.'s fee: 75 cts

Know all men by these presents
that we J. C. & J. W. Scott and
John E. Oliver
are held and firmly bound unto
the Commonwealth of Virginia
in the just and full sum of
One Hundred & Fifty Dollars
for the payment thereof well and
truly to be paid unto the said Uni-
versity, we jointly & severally
firmly by these presents bind our-
selves heirs &c, and we do to this
Bond hereby made our Hand and
all other exceptions witness
our hands and seals this 25th April 1844.

The condition of the above obli-
gation is such that whereas
an injunction was granted the said
J. C. & J. W. Scott in a certain action
in Chancery by the said Scotts vs
Begg &c. enjoining the collection of a
certain judgment mentioned in
said Bill. Now therefore should
the said Scotts pay the amount of
said judgment hereby enjoined and
all damages & costs awarded against
them, should the injunction be here-
after dissolved, then this obligation
to be void otherwise to

J. C. & J. M. Scott
in
Bond
Cregg & Co.

Filed Nov 25 1884

J. A. Scott
C. C.

Received in full for
J. C. & J. M. Scott
J. B. C. & Co.